

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICAH ANDRUM HAYES,  
Plaintiff(s),  
v.  
ANDREW SAUL,  
Defendant(s).

Case No.: 2:20-cv-01660-GMN-NJK

## **REPORT AND RECOMMENDATION**

Plaintiff requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis* (Docket No. 1), and submitted a complaint (Docket No. 1-1).<sup>1</sup> On September 15, 2020, the Court denied Plaintiff's application to proceed *in forma pauperis* without prejudice because it was incomplete. Docket No. 3 at 1. The Court ordered Plaintiff to either pay the filing fee or file an amended complaint to proceed *in forma pauperis* by October 6, 2020. *Id.* at 2. The Court warned that Plaintiff's failure to comply with this order may result in a recommendation that the case be dismissed. **PLAINTIFF'S FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN A RECOMMENDATION THAT THE CASE BE DISMISSED.”** *Id.* (emphasis in original).

On September 15, 2020, the Court also engaged in a screening of Plaintiff's complaint, finding that he failed to state a claim on which relief can be granted because he had not exhausted his remedies with the Social Security Administration. *Id.* at 1-2. Indeed, the complaint indicated that the Appeals Council had not yet rendered a decision. *See id.* at 2. The Court ordered Plaintiff to either file an amended complaint or otherwise explain how he had exhausted his administrative remedies by October 5, 2020. *Id.* The Court warned that "**FAILURE TO COMPLY WITH**

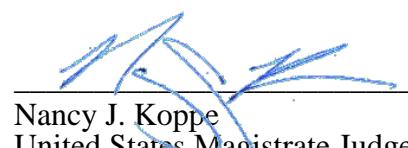
<sup>1</sup> Plaintiff is proceeding without an attorney, so the Court construes his filings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 **THIS ORDER MAY RESULT IN A RECOMMENDATION THAT THE CASE BE**  
 2 **DISMISSED.”** *Id.* (emphasis in original).

3 Notwithstanding the explicit warning that dismissal could result, Plaintiff has violated both  
 4 of the above aspects of the Court’s order. He has neither paid the filing fee nor filed an amended  
 5 application to proceed *in forma pauperis*. Moreover, he has neither filed an amended complaint  
 6 nor shown how he exhausted his administrative remedies.<sup>2</sup>

7 Having failed to show he qualifies for pauper status or to pay the filing fee, Plaintiff’s case  
 8 is subject to dismissal. *See* 28 U.S.C. § 1914. Having failed to properly plead a claim for relief,  
 9 Plaintiff’s case is subject to dismissal. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *see also* *Sparling v.*  
 10 *Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (trial court may *sua sponte* dismiss for  
 11 failure to state a claim where the plaintiff cannot possibly win relief).<sup>3</sup> Accordingly, the  
 12 undersigned **RECOMMENDS** that this case be **DISMISSED**.

13 Dated: October 8, 2020

14   
 15 Nancy J. Koppe  
 United States Magistrate Judge

17 **NOTICE**

18 This report and recommendation is submitted to the United States District Judge assigned  
 19 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and  
 20 recommendation must file a written objection supported by points and authorities within fourteen  
 21 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file  
 22 a timely objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951  
 23 F.2d 1153, 1157 (9th Cir. 1991).

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26 <sup>2</sup> Instead, Plaintiff filed a rambling document purporting to show a default by the  
 27 Commissioner. Docket No. 4.

28 <sup>3</sup> Because both of these bases provide grounds for dismissal, the undersigned does not  
 address whether dismissal is warranted for violating the Court’s order. *See* Fed. R. Civ. P. 16(f).